

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Further Forbearance from)
Title II Regulation for Certain)
Types of Commercial Mobile)
Radio Service Providers)

JUN 27 1994
GN Docket No. 94-33
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

Pursuant to Section 1.415 of the Commission's Rules, the Utilities Telecommunications Council (UTC) hereby submits its comments with respect to the Notice of Proposed Rulemaking (NPRM), in GN Docket No. 94-33, FCC 94-101, released May 4, 1994, in the above captioned matter.

I. INTRODUCTION

UTC is the national representative on communications matters for the nation's electric, gas, water, and steam utilities, and natural gas pipelines. The vast majority of mobile communications networks used by UTC's members are operated on a private internal basis and therefore fall into the "Private Mobile Radio Service" (PMRS) category as recently defined by the FCC in its Second Report and Order in this proceeding.^{1/}

^{1/} Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994).

However, a number of utilities and pipelines are exploring the possibility of operating portions of their systems on a Commercial Mobile Radio Service (CMRS) basis.

UTC's comments will be limited to the Commission's inquiry into the appropriate measurement factors in determining whether to apply additional forbearance to particular CMRS providers.

II. FOR PURPOSES OF FORBEARANCE THE MEASUREMENT OF CMRS PROVIDERS SHOULD BE BASED ON THE SIZE OF THE CMRS LICENSEE NOT THE SIZE OF AFFILIATED ORGANIZATIONS

While revised Section 332 requires that any entity providing CMRS be treated as a common carrier subject to Title II of the Communications Act, the Budget Act authorizes the Commission to exempt some or all commercial mobile services from regulation under any provision of Title II other than Sections 201 (offer service on reasonable request/reasonable charges), 202 (make no unreasonable discrimination in service) and 208 (complaint enforcement mechanism). In adopting the Second Report and Order establishing CMRS regulations the FCC opted to forbear from applying certain of the more burdensome provisions of Title II to all CMRS, the most significant of which being that no CMRS provider is required to file tariffs. In the current NPRM the FCC seeks comments on whether and how to further forbear from applying certain common carrier regulations to specific types of newly designated CMRS providers.

As a general matter, UTC urges the FCC to impose as few Title II provisions on the regulation of commercial mobile services as possible. A regulatory philosophy of "less is more" will help to ensure that smaller entrepreneurs and new communications entrants will be able to develop competitive commercial mobile services.

In the NPRM the Commission recognizes the role that further forbearance might play in reducing the cost of doing business for new CMRS providers. The FCC has focused on the size of the provider as the basis for examining when it might be appropriate to subject certain classes of CMRS providers to further forbearance. The FCC has asked for comments on several options regarding the measurement of CMRS provider size, including net worth, average annual revenues, average number of subscribers, or number of authorized channels.

The Commission proposes to apply an income and net worth standard to determine whether a particular entity is entitled to relief from the remaining Title II obligations. UTC opposes such a standard unless it separates the income and net worth of a CMRS provider from the income and net worth of affiliated non-communications related organizations. An entity that engages in only a limited amount of CMRS service should not have the administrative burden of Title II obligations, simply on the

basis of its affiliation with a larger non-telecommunications related organization. Imposition of such obligations could result in a re-evaluation of the utility or pipeline providing CMRS services and could therefore reduce the level of competitive services available to the public.

Instead, UTC would support a measurement factor that is based on objective factors that indicate the relative size of the commercial communications being offered, such as average revenues per CMRS subscriber or percentage of interconnected traffic being carried by a licensee on a CMRS basis. Any measurement factors based on loading should not count those portions of the system that are purely utilized on a private internal use basis.

III. CONCLUSION


Competition in the commercial mobile marketplace will most effectively flourish under a policy of maximum forbearance of Title II obligations for all CMRS providers. In attempting to determine CMRS provider eligibility for further forbearance the FCC should be guided by objective factors that focus on the actual type and size of CMRS being offered, rather than corporate affiliation or overall system configuration.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities
Telecommunications Council respectfully requests the Commission
to take action consistent with the views expressed herein.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS
COUNCIL

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June 27, 1994